

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

MATTHEW SMYER,	:	Case No. 3:20-cv-114
	:	
Plaintiff,	:	District Judge Michael J. Newman
	:	Magistrate Judge Sharon L. Ovington
vs.	:	
	:	
KROGER LIMITED PARTNERSHIP	:	
I, <i>et al.</i> ,	:	
	:	
Defendants.	:	

ORDER

This civil case came before the Court for a teleconference on April 2, 2021 to discuss a discovery dispute. Plaintiff seeks to depose Kroger CEO, Rodney McMullen, and to reconvene the depositions of Defendants, Eric Curtis and Jessica Utterback. Defendants oppose these requests and seek a protective order as to Mr. McMullen. Attorneys Peter Newman, Emily Gelhaus, and Daniel Rosenthal appeared and participated.

After reviewing the parties' position statements and upon hearing counsels' arguments as to the depositions and the protective order, Plaintiff's request to depose Rodney McMullen is **DENIED**, and Defendants' request for a protective order as to Mr. McMullen is **GRANTED**. *See Bush v. Dictaphone Corp.*, 161 F.3d 363, 367 (6th Cir. 1998); *Lewelling v. Farmers Ins. Of Columbus, Inc.*, 879 F.2d 212, 218 (6th Cir. 1989); *Elvis Presley Enters. v. Elvisly Yours, Inc.*, 936 F.2d 889, 894 (6th Cir. 1991).

Plaintiff's request to reconvene the depositions of Mr. Curtis and Ms. Utterback is **GRANTED**. Plaintiff shall be permitted to reconvene the depositions of Mr. Curtis and Ms. Utterback subject to the following limitations offered by Plaintiff's counsel: (1) Plaintiff may seek testimony as to the alleged alteration of notes; and (2) Plaintiff may seek

testimony arising from Defendants' responses to Plaintiff's First Set of Interrogatories and First Request for Production of Documents due on April 21, 2021.

April 6, 2021

s/Sharon L. Ovington

Sharon L. Ovington

United States Magistrate Judge